

REMARKS

The Examiner has required restriction between: Group I, claims 1 – 9, asserted as drawn to computer conferencing, classified in class 709, subclass 204; Group II, claims 10 – 31, asserted as drawn to computer data routing, classified in class 709, subclass 238; Group III, claims 32 – 42 and 43 – 50, asserted as drawn to computer data streaming, classified in class 709, subclass 231; and Group IV, claims 51 – 55, asserted as drawn to priority based messaging, classified in class 709, subclass 207. As noted above, Applicant provisionally elects Group III, claims 32 – 50 for continued examination but traverses the restriction requirement. Applicant outlines below reasons why Applicant believes restriction should not be required.

The Examiner has not shown that the current restriction requirement is proper. There are two prerequisites to a proper requirement for restriction: (1) the inventions must be independent or distinct as claimed, and (2) there would be a serious burden on the Examiner if restriction is not required. MPEP § 803(1). Additionally, a restriction requirement “will normally be made before any action upon the merits; however, it may be made at any time before final action.” 37 C.F.R. 1.142(a). In the current case, the United States Patent and Trademark Office (USPTO) has so far issued four Office Actions and participated in an Examiner’s Interview. These prosecution activities have taken place over the course of about two years. Yet, the Examiner has now issued a fifth Office Action requiring restriction. The fact that this restriction requirement has been made so late in the examination process indicates that there is no serious burden if restriction is not required. The M.P.E.P. warns that late restriction requirements should require special consideration of whether there is a serious burden on the Examiner if restriction is not required:

Before making a restriction requirement after the first action on the merits, the examiner will consider whether there will be a serious burden if restriction is not required.

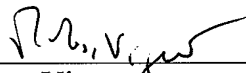
M.P.E.P. § 811. In the current case, the Examiner has not even attempted to address how a serious burden arises after the advanced examination of the claims. Indeed, the Examiner cannot reasonably suggest that after preparing four Office Actions, examining each of the currently pending claims multiple times over a two-year period, the current claims have suddenly become a serious burden to examine together. The Applicant submits that, on the

current facts, the Examiner has not established that there would be a serious burden if restriction is not required. The current restriction requirement is therefore improper. Accordingly, the Applicant respectfully requests that the Examiner reconsider and withdraw the current restriction requirement.

Applicant believes no fee is due with this response. Please charge any additional fees required or credit any overpayment to Deposit Account No. 06-2380, under Order No. 64032/P006US/10303189 during the pendency of this Application pursuant to 37 CFR 1.16 through 1.21 inclusive, and any other sections in Title 37 of the Code of Federal Regulations that may regulate fees.

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Respectfully submitted,

By  _____

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